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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/775,548	02/05/2001	Takayuki Fujikawa	SON-995/REISSUE	9491
7590	09/15/2009		EXAMINER	
Ronald P Kananen Esq Rader Fishman & Grauer PLLC 1233 20th Street NW Suite 501 Washington, DC 20036			MARC, MCDIEUNEL	
			ART UNIT	PAPER NUMBER
			3664	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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Ronald P. Kananen, Esq.
Rader, Fishman & Grauer PLLC
1233 20th Street, N.W.
Suite 501
Washington, D.C. 20036

MAILED

SEP 15 2009

CENTRAL REEXAMINATION UNIT

In re Application of :
Takayuki Fujikawa et al. : DECISION
Application No. 09/775,548 : TERMINATING
Filed: February 5, 2001 : REISSUE PROCEEDING
Practitioner Docket No.: SON-995/REISSUE :
:

This is a decision terminating the instant reissue proceeding by default based on (1) the expiration of U.S. patent 5,870,527, for which patent the present application requests reissue, and (2) the failure of applicants to respond to the Order to Show Cause mailed by the Office on June 18, 2009.

BACKGROUND

1. Reissue application No. 09/775,548 ("the '548 reissue application") was filed on February 5, 2001, for reissue of U.S. Patent No. 5,870,527 ("the '527 patent") issued February 9, 1999.
2. The Image File Wrapper record for the '548 reissue application reveals that a paper titled "Response To Paper No. 17" was filed by applicants on December 29, 2003.
3. The Office's financial records reveal that the 7.5 year maintenance fee due by February 9, 2007 (the end of the maintenance fee grace period), was not paid.
4. The '527 patent expired at midnight on February 9, 2007, for failure to pay the 7.5 year maintenance fee that was due.¹ Notice of the expiration of the '527 patent for failure to pay the 7.5 year maintenance fee was published on April 10, 2007, in the *Official Gazette*.²
5. On June 18, 2009, an Order to Show Cause was mailed to applicants, setting a 30-day period for a response showing sufficient cause why the Office should not terminate the present reissue proceeding. The Order makes clear that a failure by

¹ See: MPEP § 2506, third paragraph.

² See: <http://www.uspto.gov/web/offices/com/sol/og/2007/week15/patexpi.htm>.

applicants to respond to the show cause order within the set 30-day period will result in the termination of the present reissue proceeding by default.

6. No response to the June 18, 2009 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired.

DECISION

As pointed out above, no response to the June 18, 2009 Order to Show Cause has been received by the Office, and the 30-day period for response to the Order has expired. In addition, there is no record of any filed petition addressing the failure to pay the 7.5 year maintenance fee, as would be required in order to reinstate the '527 patent.

When a patent has expired, the Director of the USPTO no longer has the authority under 35 U.S.C. 251 to reissue the patent. See *In re Morgan*, 990 F.2d 1230, 26 USPQ2d 1392 (Fed. Cir. 1993). As stated in *Morgan*,

"The language of section 251 is unambiguous: the Commissioner has authority to reissue a patent only 'for the unexpired part of the term of the original patent.' Thus, when Morgan's original patent expired on August 19, 1992, the Commissioner was divested of his reissue authority because there no longer was an unexpired term of the patent for which Morgan's patent could be reissued. Morgan's appeal thus became moot." [990 F.2d at 1231, 26 USPQ2d at 1393.] [Emphasis added.]

Since the '527 patent expired for failure to pay the requisite maintenance fee, and applicants have not provided any information to the contrary after being afforded an opportunity to do so, the instant reissue application (reissue proceeding) is hereby terminated. Accordingly, the Technology Center is to proceed to hold the reissue application to be an abandoned application, and process the application accordingly.

CONCLUSION

1. The present reissue application is hereby terminated.
2. Jurisdiction over the reissue application file is being forwarded to Technology Center Art Unit 3664 for processing the application as an abandoned application.

3. Telephone inquiries related to this decision should be directed to Raul Tamayo, Legal Advisor, at (571) 272-7728.

Kenneth M. Schor

Kenneth M. Schor
Senior Legal Advisor
Office of Patent Legal Administration

8-28-09

Kenpet7/reissue/SCO+terminate